

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 November 2024

DOCKET NUMBER: AR20230015295

APPLICANT REQUESTS:

- in effect, correction of her records to show she submitted her DD Form 2656 (Data for Payment of Retired Personnel), 16 March 2022, to the Defense Finance and Accounting Service (DFAS) in connection with her 31 August 2022 retirement and DFAS received and processed the form in a timely manner
- reimbursement of all Survivor Benefit Plan (SBP) premiums already paid

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- DD Form 2656, 16 March 2022
- DFAS Retired and Annuity Pay Letter, 15 September 2022, with auxiliary documents
- Letter to DFAS, 18 November 2022
- Monthly Retiree Account Statement – SBP Coverage, October 2023

FACTS:

1. The applicant states she completed her DD Form 2656 on 16 March 2022 wherein she elected to decline SBP coverage with her spouse's concurrence.

a. The form was supposed to have been submitted to DFAS by Mr. [REDACTED] of the Stuttgart Transition Center while she was stationed in Germany.

b. On 15 November 2022, she received a letter from DFAS indicating they had not received her DD Form 2656 and that SBP premiums would be deducted from her retired pay based on her automatic enrollment. She then spoke to a DFAS representative on 16 November 2022 at 1032. On 19 November 2022 at 1445, she resubmitted a copy of her DD Form 2656 by fax to the DFAS representative and received a confirmation that the fax had successfully transmitted at 1452. As of 1 November 2023, she was still being charged premiums for SBP coverage.

c. DFAS informed her that she was unable to decline SBP coverage because her DD Form 2656 was received after her retirement date. After speaking to another DFAS representative on 8 November 2023 at 0945, she was advised to apply to the Army Board for Correction of Military Records to have her records corrected to reflect her original SBP election submission in 2022.

d. The apparent failure of the Stuttgart Retirement Services Office representative to submit her DD Form 2656 to DFAS when it was signed in that office on 16 March 2022 has now cost her \$2,974.58 in SBP premiums. At \$212.47 per month, she will continue to accrue charges that she neither authorized nor elected to continue.

e. She will work directly with DFAS to process a discontinuation form during the SBP Open Season; however, she requests adjustment of her SBP coverage discontinuation date to reflect 16 March 2022 (the date of her original declination). She also requests reimbursement of the unauthorized SBP deductions for the previous 14 months.

2. Following enlisted service in the Regular Army, she was appointed as a Reserve warrant officer of the Army in the rank/grade of warrant officer 1/W-1 effective 4 March 2010. She was promoted to the rank/grade of chief warrant officer 3/W-3 effective 1 March 2017.

3. Installation Management Command-Europe, Stuttgart Transition Center, Germany, Orders 232-0002, 20 August 2021, retired her effective 31 August 2022 and placed her on the Retired List in the rank/grade of chief warrant officer 3/W-3 effective 1 September 2022.

4. Her DD Form 2656, 16 March 2022, shows in:

a. Part I (Retired Pay Information), Section I (Pay Identification), block 4 (Retirement/Transfer Date), she entered 1 September 2022 (should read 31 August 2022);

b. Part III (SBP), Section IX (Dependency Information), block 29 (Spouse), she listed [REDACTED] with a marriage date of 15 February 2018;

c. Part III (SBP), Section IX (Dependency Information), block 32 (Dependent Children), she did not list any dependent children;

d. Part III, Section X (SBP Election), block 34 (SBP Beneficiary Categories), she placed an "X" in the box by the statement: "I elect not to participate in SBP";

e. Part IV (Certification), Section XI (Certification), block 39 (Member), she signed the form on 16 March 2022 and her signature was witnessed at the Stuttgart Transition Center, Germany, on 16 March 2022; and

f. Part V (Spouse SBP Concurrence) (Required ONLY when member is married and elects either: (a) child only SBP coverage, (b) does not elect full spouse SBP coverage; or (c) declines SBP coverage. The date of the spouse's signature in Block 41c MUST NOT be before the date of the member's signature in Block 39c, or on or after the date of retirement listed in Part I, Section I, Block 4. The spouse's signature MUST be notarized.), Section XII (SBP Spouse Concurrence) (I hereby concur with the SBP election made by my spouse. I have received information that explains the options available and the effects of those options. I know that retired pay stops on the day the retiree dies. I have signed this statement of my free will.), her spouse signed the form on 16 March 2022 and his signature was witnessed by a notary public on the same date.

5. She retired on 31 August 2022 in the rank/grade of chief warrant officer 3/W-3. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she completed 12 years, 5 months, and 27 days of net active service during this period and 7 years, 6 months, and 13 days of total prior active service, for a total of 20 years and 10 days of active service.

6. The DFAS letter, 15 September 2022, welcomed her to the Retired Roll of the U.S. Army. DFAS established her retired pay account as shown in the attached summary. DFAS informed her that all the necessary documents to ensure accurate establishment of her retired pay account had not been received and stated her account will be systematically reviewed and adjusted for any underpayments or overpayments as soon as these documents are obtained.

7. The DFAS Cleveland Center Summary of Retired Pay Account, 15 September 2022, described how her retired pay is computed. The portion relating to SBP states: We have not received your SBP Election Certificate, and have provided automatic SBP coverage effective 01 SEP[TEMBER] 2022. To provide correct information, access DD Form 2656-8 SBP Fact Sheet at <http://www.dfas.mil/retiredmilitary/forms.html>. Coverage: Spouse Only; Current Base Amount: 3,230.00; SBP Cost 209.95

8. Her October 2023 Retiree Account Statement shows she is paying SBP premiums for "Spouse Only" coverage.

9. Her letter to DFAS, 18 November 2022, acknowledged receipt of the Summary of Retired Pay. She stated the missing information related to her SBP election and marital status; however, the DD Form 2656 was completed and signed on 16 March 2022. She

and her spouse elected to decline SBP coverage and there should not be any deductions taken from her retired pay for this purpose. She attached a copy of her DD Form 2656 and requested reimbursement of any deductions taken for this purpose.

10. She submitted an SBP and Reserve Component SBP Open Season Election to Discontinue Participation with notarized spousal concurrence to DFAS on 17 November 2023, requesting discontinuation of her SBP coverage.

11. The DFAS U.S. Military Retired Pay letter, 6 December 2023, informed her that they received her request to discontinue her SBP on 21 November 2023 during the 2023 SBP Open Season, found her request was valid, and processed it with an effective date of 1 December 2023.

12. The email correspondence from the DFAS Board for Correction of Military Records/ Congressional Lead (Reply: Army Review Boards Agency Assistance), 30 September 2024, noted the applicant's DD Form 2656 is valid. Her SBP election was then revised from automatic enrollment to declined as of 21 November 2023. Her SBP participation was stopped before any premiums were deducted for 1 December 2023. Under the provisions of the 2023 SBP Open Season, she is not entitled to retroactive credit for paid SBP premiums.

13. The email correspondence from the DFAS Board for Correction of Military Records/ Congressional Lead (Reply: Army Review Boards Agency Assistance), 1 October 2024, noted the applicant paid SBP costs from 1 September 2022 through 30 November 2023 and unfortunately was not entitled to a refund. The DFAS database contains the following documents:

- her DD Form 2656, 16 March 2022, described above;
- the DFAS letter, 15 September 2022, with Summary of Retired Pay Account described above;
- her letter to DFAS, 18 November 2022, described above;
- her SBP and Reserve Component SBP Open Season Election to Discontinue Participation, 17 November 2023, described above; and
- the DFAS U.S. Military Retired Pay letter, 6 December 2023, described above.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant retired effective 31 August 2022. In anticipation of retirement, the applicant submitted a properly authenticated DD Form 2656 indicating the specific intent to decline SBP coverage. For unknown reasons, the form was not

processed prompting the applicant to be automatically enrolled and charged premiums. Although the applicant has since been discontinued from the program (effective 1 December 2023), there is an outstanding contested sum of \$2,974.58. DFAS concurred an error occurred and agreed to discontinue the applicant in accordance with the initially submitted request. The Board determined that this injustice was not of her doing and is legally within her right to ask for reimbursement. Therefore, the Board determined relief is warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- showing the applicant timely submitted the appropriate form (DD Form 2656) declining SBP participation, with spouse's concurrence, on 16 March 2022 to the Defense Finance and Accounting Service in connection with her 31 August 2022 retirement
- showing Defense Finance and Accounting Service timely received and processed her SBP election to decline participation in a timely manner
- reimbursement of all Survivor Benefit Plan (SBP) premiums already paid

11/18/2024

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Public Law 92-425, enacted 21 September 1972, established the SBP. The SBP provided that military members on active duty could elect to have their retired pay reduced to provide for an annuity after death to surviving dependents. An election, once made, was irrevocable except in certain circumstances. The election must be made before the effective date of retirement or coverage defaults to automatic spouse coverage. Since its creation, it has been subjected to a number of substantial legislative changes.
2. Title 10, U.S. Code, section 1448, requires notice to a spouse if a member elected not to participate in the SBP. The statute also provided for automatic enrollment for spouse coverage at the full base amount unless a member affirmatively declined to participate in the SBP prior to receiving retired pay.
3. Public Law 99-145, enacted 8 November 1985 but effective 1 March 1986, required written concurrence by the spouse in a member's decision to decline the SBP or elect spouse coverage at less than the full base amount.
4. Public Law 105-85, enacted 18 November 1997, established the option to terminate SBP participation. Retirees have a 1-year period beginning on the second anniversary of the date on which their retired pay started to withdraw from the SBP. The spouse's concurrence is required. No premiums will be refunded to those who opt to disenroll. The effective date of termination is the first day of the first calendar month following the month in which the election is received by the Secretary concerned.
5. The National Defense Authorization Act for Fiscal Year 2023 included an SBP Open Season. The SBP Open Season began on 23 December 2022 and ended on 1 January 2024.
 - a. The SBP Open Season allowed retirees receiving retired pay, eligible members, or former members awaiting retired pay who were currently not enrolled in the SBP or Reserve Component SBP as of 22 December 2022 to enroll. For a member who enrolled during the SBP Open Season, the law generally required that the member would be responsible to pay retroactive SBP premium costs that would have been paid if the member had enrolled at retirement (or enrolled at another earlier date, depending on the member's family circumstances). For retirees receiving pay, enrollment requires paying the premiums plus interest for the period since the date they were first eligible to enroll, as well as the monthly premiums moving forward.
 - b. The SBP Open Season also allowed eligible members and former members who were currently enrolled in the SBP or Reserve Component SBP as of 22 December 2022 to permanently discontinue their SBP coverage. The law generally required the

covered beneficiaries to concur in writing with the election to discontinue. Previously paid premiums will not be refunded.

//NOTHING FOLLOWS//